

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOSE R. BARRERA,

Plaintiff,

v.

DAVID WINN, ET AL.,

Defendants.

C.A. No. 05-40107-RWZ

MOTION FOR LEAVE TO AMEND COMPLAINT

NOW COMES, Plaintiff, Jose R. Barrera, pursuant to Rule 15 of the Federal Rules of Civil Procedure, requesting leave of the Honorable Court to amend his complaint to request the following:

1. That the Court enter a declaratory judgment finding that 18 U.S.C. §4042(c) does not authorize Plaintiff's classification as a sex offender or Bureau of Prisons notification to state and local law enforcement officers and agencies of such status upon Plaintiff's release, based on a 40 year old state conviction. Rather, the scope of the statute is limited to classification and notification where the federal offense of conviction is a sexual offense.

2. That the Court issue injunctive relief precluding the Bureau of Prisons from issuing any notification to any law enforcement officers and/or agencies until final resolution of the issue raised above.

In support of this request, Plaintiff states the following:

1. Rule 15 of the Federal Rules of Civil Procedure states that leave to amend "shall be freely given when justice so requires."

2. At the time Plaintiff filed his initial complaint, he did not realize that the Bureau of Prisons would be notifying law enforcement officials that he was a sex offender based on a 40 year old state conviction, particularly where the conviction, for which he received a six month suspended sentence, was based on consensual sex with the woman whom he later married. At the time of the consensual sex his then girlfriend, later wife, was 16 and Plaintiff was 19. Her parents opposed their relationship and pressed charges; they married when she could do so without parental consent.

3. Plaintiff now realizes that the Bureau of Prisons has interpreted the scope of 18 U.S.C. §4042(c) to include prior state convictions and wishes to amend his complaint to include a challenge to that interpretation.

WHEREFORE, in the interest of Justice, Plaintiff prays that the Honorable Court will grant leave to amend his original complaint.

On this 27th day of August, 2005,

Respectfully submitted,

by 

Jose R. Barrera
Reg. No. 57833-053
F.M.C. Devens
P.O. Box 879
Ayer, MA 01432


CERTIFICATE OF SERVICE

I, Jose R. Barrera, certify that I sent a true copy of the enclosed documents First Class mail, postage pre-paid to the following individual(s):

Damian W. Wilmot
Assistant United States Attorney
John Joseph Moakley U.S. Courthouse
One Courthouse Way, Suite 9200
Boston, MA 02210

on this 29th day of August, 2005,

Respectfully submitted,

by 

Jose R. Barrera

Reg. No. 57833-053

F.M.C. Devens

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Ayer, MA 01432